

To: Ian Beilby[ian.beilby@dec.ny.gov]; Kwan, Caroline[kwan.caroline@epa.gov]
Cc: Vaughn, Stephanie[Vaughn.Stephania@epa.gov]; Schmidt, Mark[schmidt.mark@epa.gov]; Mintzer, Michael[Mintzer.Michael@epa.gov]; Quail, Rebecca A (DEC)[rebecca.quail@dec.ny.gov]; Leonard, Edward L.[leonardel@cdmsmith.com]; Weissbard, Ron[RWeissbard@dep.nyc.gov]; David Bridgers[David.bridgers@wallerlaw.com]; Nace, Charles[Nace.Charles@epa.gov]; Cooke, Daniel W.[cookedw@cdmsmith.com]; Tom Schadt[tschadt@anchorqea.com]; David Haury[dhaury@anchorqea.com]; Amron, Susan[samron@law.nyc.gov]
From: Sivak, Michael
Sent: Mon 4/3/2017 2:41:40 PM
Subject: RE: Newtown Creek: Further Extension of Negotiation Period for Dispute Concerning the Baseline Ecological Risk Assessment

Ian,

Thank you for your reply. However, your note does not say what information from the emails cited were reviewed, and what DEC's position on this information, both on information provided by EPA and AQ, is.

As soon as possible, please provide clarification on what DEC's position is on the outstanding technical issues so that DEC's input can be considered by EPA in the resolution.

Michael Sivak

212.637.4310

From: Beilby, Ian A (DEC) [mailto:ian.beilby@dec.ny.gov]
Sent: Wednesday, March 29, 2017 11:46 AM
To: Sivak, Michael <Sivak.Michael@epa.gov>; Kwan, Caroline <kwan.caroline@epa.gov>
Cc: Vaughn, Stephanie <Vaughn.Stephania@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; Quail, Rebecca A (DEC) <rebecca.quail@dec.ny.gov>
Subject: RE: Newtown Creek: Further Extension of Negotiation Period for Dispute Concerning the Baseline Ecological Risk Assessment

Michael,

Thanks for following up.

I have reviewed the following pertinent materials as part of the dispute resolution process:

1. emails from Stephanie Vaughn to J. Quadrini on 2/17 and 2/21
2. the EPA presentation of 3/21
3. email from Caroline Kwan to D. Haury on 3/21

Based on the EPA's positions reflected in those materials, the DEC has only one outstanding issue. This issue was raised to Dan Cooke of CDMSmith and copied EPA staff on 3/24 as part of our original Aldrin/Dieldrin (bioaccumulative) COPC concerns and is related to a note on one of the BERA Tables:

Table 8-4c

Notes:

a = The chronic threshold values used for chlordane, alpha- (Chlordane, cis-), chlordane, beta- (Chlordane, trans-), and hexachlorobenzene were revised from the surface water risk screening to be protective of aquatic life; the values in the surface water risk screening were for the protection of wildlife.

The DEC has not been able to determine the method that was used to "revise" the surface water risk screening value to a pore water-specific screening value. It is hoped that EPA can assist with our understanding of this revision outside of the resolution process or ask NCG to clarify the process that was used.

- Thank you.

Ian

From: Sivak, Michael [<mailto:Sivak.Michael@epa.gov>]
Sent: Tuesday, March 28, 2017 4:53 PM
To: Beilby, Ian A (DEC) <ian.beilby@dec.ny.gov>; Kwan, Caroline <kwan.caroline@epa.gov>
Cc: Vaughn, Stephanie <Vaughn.Stephannie@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>
Subject: RE: Newtown Creek: Further Extension of Negotiation Period for Dispute Concerning the Baseline Ecological Risk Assessment

Ian,

Please let me know if you plan to send comments from NYS DEC on the items still under dispute. Thank you.

Michael Sivak

212.637.4310

From: Sivak, Michael
Sent: Wednesday, March 22, 2017 7:57 AM
To: 'Beilby, Ian A (DEC)' <ian.beilby@dec.ny.gov>; Kwan, Caroline <kwan.caroline@epa.gov>
Cc: Jim Quadrini <jquadrini@anchorqea.com>; Quail, Rebecca A (DEC) <rebecca.quail@dec.ny.gov>; David Haury <dhaury@anchorqea.com>; Vaughn, Stephanie <Vaughn.Stephannie@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; rweissbard@dep.nyc.gov; samron@law.nyc.gov; Mehran, Reyhan (NOAA) <Reyhan.Mehran@noaa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; Nace, Charles <Nace.Charles@epa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; Edward Leonard <leonardel@cdmsmith.com>; Cooke, Daniel W. <cookedw@cdmsmith.com>
Subject: RE: Newtown Creek: Further Extension of Negotiation Period for Dispute Concerning the Baseline Ecological Risk Assessment

Ian:

I am sorry that you were not able to participate in the wrap-up meeting for the dispute resolution yesterday afternoon. However, in order for me to be able to consider NYS DEC's view on the issues that will be addressed in the dispute resolution, it would be helpful for you to provide written comments from the State on these issues, or to identify any particular matter that the State wants to bring to my attention. The meeting will start at 2 PM and I expect that it will continue until 4:30 PM or perhaps later.

I anticipate that I will issue my written decision by April 4, so any written comments that you provide should be sent to me as soon as possible.

Michael Sivak

212.637.4310

From: Beilby, Ian A (DEC) [<mailto:ian.beilby@dec.ny.gov>]
Sent: Tuesday, March 21, 2017 11:18 AM
To: Kwan, Caroline <kwan.caroline@epa.gov>
Cc: Jim Quadrini <jquadrini@anchorqea.com>; Quail, Rebecca A (DEC) <rebecca.quail@dec.ny.gov>; David Haury <dhaury@anchorqea.com>; Vaughn, Stephanie <Vaughn.Stephanie@epa.gov>; Sivak, Michael <Sivak.Michael@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; rweissbard@dep.nyc.gov; samron@law.nyc.gov; Mehran, Reyhan (NOAA) <Reyhan.Mehran@noaa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; Nace, Charles <Nace.Charles@epa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; Edward Leonard <leonardel@cdmsmith.com>; Cooke, Daniel W. <cookedw@cdmsmith.com>
Subject: RE: Newtown Creek: Further Extension of Negotiation Period for Dispute Concerning the Baseline Ecological Risk Assessment

Caroline,

I will most likely not be able to attend this afternoon's meeting/call due to its rescheduling. Feel free to reach out to me if there are any items that I need to follow-up on.

Ian

Ian Beilby, P.E.

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From: Kwan, Caroline [<mailto:kwan.caroline@epa.gov>]

Sent: Tuesday, March 21, 2017 9:43 AM

To: David Haury <dhaury@anchorqea.com>; Vaughn, Stephanie <Vaughn.Stephanie@epa.gov>; Sivak, Michael <Sivak.Michael@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; rweissbard@dep.nyc.gov; samron@law.nyc.gov; Mehran, Reyhan (NOAA) <Reyhan.Mehran@noaa.gov>; Beilby, Ian A (DEC) <ian.beilby@dec.ny.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; Nace, Charles <Nace.Charles@epa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; Edward Leonard <leonardel@cdmsmith.com>; Cooke, Daniel W. <cookedw@cdmsmith.com>

Cc: Tom Schadt <tschadt@anchorqea.com>; Jim Quadrini <jquadrini@anchorqea.com>; David.bridgers@wallerlaw.com; Linda Logan <llogan@anchorqea.com>

Subject: RE: Newtown Creek: Further Extension of Negotiation Period for Dispute Concerning the Baseline Ecological Risk Assessment

David:

This is in response to NCG's Summary of Dispute referenced in your email below on the NYSDEC WQS.

The Draft BERA written by Anchor QEA for the Newtown Creek site was submitted to EPA in February 2016. EPA reviewed the document, and issued comments on 6/11/16. The NCG responded to the comments on 11/4/16, and EPA replied to NCG on December 6, 2016. The NCG then submitted a Notice of Dispute Resolution regarding the BERA on 12/22/16. A Dispute Resolution meeting was held in New Orleans on 1/11/17 (coincident with the Battelle sediment conference), and among the technical issues that could potentially be resolved through additional information was a request from NCG for EPA to provide additional information on a comment requiring NCG to use NYSDEC-derived water quality criteria for DDx and Aldrin/dieldrin in the Draft BERA. Anchor QEA submitted a memorandum, "Newtown Creek Baseline Ecological Risk Assessment Benthic Macroinvertebrate Risk Assessment Summary" on 2/2/17, with this request formalized. NYSDEC forwarded an email to NCG on 2/7/17, with an explanation of the WQC derivation. But during a 2/13/17 conference call, NCG requested that EPA discuss the WQC with NYSDEC.

During a 2/17/17 conference call between EPA and NYSDEC, it was agreed that the NYSDEC DDx and Aldrin/dieldrin WQC values should be included in the SLERA, but that the WQC values utilized by NCG in the BERA were appropriate. However, a thorough discussion of the bioavailability of these and other bioaccumulative and persistent compounds (e.g., pesticides and PCBs) and their presence in biota tissue should be detailed in the risk characterization section. Statements indicating that only porewater contaminants are bioavailable, and that contaminants in bulk sediment are not bioavailable need to be better supported, particularly in light of the observed tissue concentrations.

We can discuss further at the wrap-up meeting today.

thanks

Caroline

Caroline Kwan

Project Manager
Special Projects Branch
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From: David Haury [<mailto:dhaury@anchorqea.com>]
Sent: Thursday, March 09, 2017 4:52 PM
To: Vaughn, Stephanie <Vaughn.Stephanie@epa.gov>; Sivak, Michael <Sivak.Michael@epa.gov>; Kwan, Caroline <kwan.caroline@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; rweissbard@dep.nyc.gov; samron@law.nyc.gov; Mehran, Reyhan (NOAA) <Reyhan.Mehran@noaa.gov>; ian.beilby@dec.ny.gov; Mintzer, Michael <Mintzer.Michael@epa.gov>; Nace, Charles <Nace.Charles@epa.gov>
Cc: Tom Schadt <tschadt@anchorqea.com>; Jim Quadrini <jquadrini@anchorqea.com>; David Bridgers <David.bridgers@wallerlaw.com>; Linda Logan <llogan@anchorqea.com>
Subject: RE: Newtown Creek: Further Extension of Negotiation Period for Dispute Concerning the Baseline Ecological Risk Assessment

Stephanie – Please see the attached for the NCG’s summary of the current status of the BERA dispute. We will be prepared to summarize our positions on March 14th, and address any questions and comments that arise during the meeting. We have also posted the summary to the USEPA and NYC SharePoint sites. Let me know if you have any questions on the summary. Thank you and see you next week in New York.

USEPA: BERA Dispute Resolution: Status Summary – March 7, 2017

NYC: BERA Dispute Resolution: Status Summary – March 7, 2017

David H. Haury

Principal

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From: Vaughn, Stephanie [<mailto:Vaughn.Stephanie@epa.gov>]

Sent: Wednesday, March 08, 2017 2:42 PM

To: David Haury <dhaury@anchorqea.com>; Sivak, Michael <Sivak.Michael@epa.gov>; Kwan, Caroline <kwan.caroline@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; rweissbard@dep.nyc.gov; samron@law.nyc.gov; Mehran, Reyhan (NOAA) <Reyhan.Mehran@noaa.gov>; ian.beilby@dec.ny.gov; Mintzer, Michael <Mintzer.Michael@epa.gov>; Nace, Charles <Nace.Charles@epa.gov>

Cc: Tom Schadt <tschadt@anchorqea.com>; Jim Quadrini <jquadrini@anchorqea.com>; David Bridgers <David.bridgers@wallerlaw.com>

Subject: RE: Newtown Creek: Further Extension of Negotiation Period for Dispute Concerning the Baseline Ecological Risk Assessment

Hi David,

Thank you for your time yesterday.

As we discussed, the NCG will be providing a revised dispute letter which (1) briefly outlines the items still under dispute and (2) proposes language to resolve the items that are, or potentially are, resolved.

In order for EPA to be fully prepared for the in-person meeting at V&E on March 14th, we request that you submit this letter no later than noon on Friday, but preferably earlier.

Please let us know if you have any concerns.

Thanks,

Stephanie

From: David Haury [<mailto:dhaury@anchorqea.com>]

Sent: Thursday, March 02, 2017 11:54 AM

To: Sivak, Michael <Sivak.Michael@epa.gov>; Kwan, Caroline <kwan.caroline@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; Vaughn, Stephanie <Vaughn.Stephanie@epa.gov>; rweissbard@dep.nyc.gov; samron@law.nyc.gov; rayhan.mehran@noaa.gov; ian.beilby@dec.ny.gov; Mintzer, Michael <Mintzer.Michael@epa.gov>; Nace, Charles <Nace.Charles@epa.gov>

Cc: Tom Schadt <tschadt@anchorqea.com>; Jim Quadrini <jquadrini@anchorqea.com>; David Bridgers <David.bridgers@wallerlaw.com>

Subject: Newtown Creek: Further Extension of Negotiation Period for Dispute Concerning the Baseline Ecological Risk Assessment

Michael and Stephanie – I am writing in reply to the email sent by Michael to Tom Schadt and David Bridgers on February 23, 2017 clarifying the schedule for the Newtown Creek BERA dispute process (see below for the text of the email). The NCG would like to schedule a call on March 7, 2017 from 3pm to 4 pm ET to continue our technical discussions, if that day and time works for the EPA folks who are participating in the technical discussions. During that call, the NCG will discuss some of the responses provided by EPA to the NCG via email on February 17 and 20, 2017. In addition, our reading of Michael's email is that EPA would like to end the technical discussions in time for Michael to provide his final decision on the items under dispute by March 21, 2017. To that end, the NCG would like to schedule an in-person "wrap-up" meeting with EPA in the morning of March 14, 2017, assuming that Michael Sivak, and other EPA attendees are available that day. Let me know if you are available on these days and times. Thanks.

EPA is writing in connection with the dispute by the Newtown Creek Group of respondents (NCG Respondents), disputing the requirements of EPA's e-mail of December 8, 2016 which directed that Anchor, on behalf of the respondents, provide to EPA by January 23, 2017, a modified Draft Baseline Ecological Risk Assessment ("BERA") responsive in full to EPA comments transmitted by the December 8 email. This dispute was invoked by letter dated December 22, 2016 (sent to EPA by email on December 22) on behalf of the NCG respondents, pursuant to the "Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study" (AOC) at the Newtown Creek Superfund site.

By email dated January 20, 2017, EPA extended the Negotiation Period for the dispute until close of business on February 23, 2017.

Please be advised that pursuant to Paragraph 65 of the AOC, EPA has further extended the Negotiation Period for the dispute until close of business on Tuesday, March 21, 2017.

By selecting this date, EPA acknowledges ongoing technical conversations between EPA and AQ, and allows for the next technical conversation to be scheduled on or about March

7, 2017, which is two weeks after EPA's most recent submittal of information to AQ as part of these ongoing technical conversations. This date also allows for an additional call to discuss issues remaining with regard to the dispute, to be scheduled by March 14, 2017.

The dispute will also address the date required for the submittal by respondents of an approvable BERA responsive to all EPA comments. Thus, in accordance with Paragraph 66 of the AOC, respondents will be required to submit the BERA on the date determined by agreement reached during the Negotiation Period for the dispute, or failing such agreement, on the date determined in accordance with EPA's decision on the dispute.

Michael Sivak

**Chief, Passaic, Hackensack and Newark Bay Remediation Branch
EPA Region 2 Superfund Program**

David H. Haury

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